CASE NO. 86-1597

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

LAVAUN CHETISTER,

Petitioner,

v.

ANDY DOUGLAS, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

MAY A PARTY TO A STATE COURT PROCEEDING COLLATERALLY ATTACK ADVERSE STATE APPELLATE COURT JUDGMENTS BY FILING SUIT IN A UNITED STATES DISTRICT COURT AGAINST THE STATE'S APPELLATE COURTS AND THE APPELLATE COURT JUDGES WHO CONSIDERED THE PARTY'S STATE COURT APPEALS?

PARTIES

The petitioner is named in the caption of the case.

The respondents are: The Ohio Supreme Court; The Ohio Court of Appeals for the Sixth District; Frank D. Celebrezze, former Chief Justice of the Ohio Supreme Court; Clifford F. Brown, former Justice of the Ohio Supreme Court; the Honorable A. William Sweeney, Justice of the Ohio Supreme Court; the Honorable Ralph S. Locher, Justice of the Ohio Supreme Court; the Honorable Robert E. Holmes, Justice of the Ohio Supreme Court; James P. Celebrezze, former Justice of the Ohio Supreme Court; the late Justice William B. Brown, former Justice of the Ohio Supreme Court; the Honorable Andy Douglas, formerly a Judge for the Ohio Court of Appeals for the Sixth District and now a Justice of the Ohio Supreme Court; the Honorable Alice Robie Resnick, Judge of the Ohio Court of Appeals; and the Honorable Peter M. Handwork, Judge of the Ohio Court of Appeals. Petitioner asserts that the individual judges and justices are named in both their individual and official capacities.

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The opinion of the United States District Court for the Northern District of Ohio dismissing plaintiff's complaint for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction (Case No. C84-8077), which was rendered on January 3, 1986, is unreported. The District Court's decision is reproduced in the Petition for Certiorari at pages A-21 to A-23.

The opinion of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court (Case No. 86-3057), which was rendered on January 13, 1987, is also unreported and is reproduced in the Petition for Certiorari at pages A-24 to A-28.

STATEMENT OF CLAIMED JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit was entered on January 13, 1987. Jurisdiction is alleged pursuant to 28 U.S.C. Section 1254(1) and the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First, Eleventh, and Fourteenth Amendments to the United States Constitution; 42 U.S.C. §1983; 42 U.S.C. §1988; Article IV, Section 2 of the Ohio Constitution; Ohio Revised Code Section 2505.29; Ohio Supreme Court Rule of Practice II, §2; and Ohio Rule of Appellate Procedure 12(A), all of which are reproduced in the appendix to this brief.

STATEMENT OF THE CASE

In 1983, the Lucas County, Ohio Court of Common Pleas directed a verdict against plaintiff (now petitioner) Lavaun Chetister in a case she had filed alleging fraud in connection with a real estate transaction. *Chetister v. Chetister,* Case No. CV82-1161 (Lucas County C.P., Aug. 24, 1983). (See p. A-1). The Common Pleas Court held that plaintiff's complaint was barred by the doctrine of laches.

The Ohio Court of Appeals for the Sixth Judicial District affirmed the trial court's judgment, finding that petitioner had not established the elements of her cause of action in fraud. *Chetister v. Chetister,* Case No. L-83-318 (Lucas County App., Feb. 3, 1984). (See p. A-4 to A-7).

Chetister then filed a notice of appeal to the Ohio Supreme Court which, pursuant to Rule II, Section 2 of the Rules of Practice of the Ohio Supreme Court, that court treated as a motion to certify since the memorandum supporting the appeal did not contain constitutional claims. (See p. A-8 to A-31). The Ohio Supreme Court overruled the motion to certify. *Chetister v. Chetister,* Case No. 84-336 (Ohio Sup. Ct., April 11, 1984). (See p. A-32).

Petitioner subsequently filed a motion for rehearing in which she asserted, as her only constitutional claim, that the Ohio Supreme Court had deprived her of equal protection under the law because the Court had previously accepted jurisdiction of appeals involving the interpretation of Ohio Appellate Rule 12(A) (all errors assigned and briefed are to be passed upon by the appellate court), but had refused to certify her appeal which also raised questions regarding the interpretation of Ohio Appellate Rule 12(A). (See p. A-33 to A-37). The Ohio Supreme Court denied Chetister's motion for rehearing. *Chetister v. Chetister,* Case No. 84-336 (Ohio Sup. Ct., April 11, 1984) *reh. denied* May 9, 1984. (See p. A-38).

Petitioner Chetister then filed a notice of appeal to this Court. This Court dismissed petitioner's appeal for want of jurisdiction, and, treating the appeal as a petition for certiorari, denied certiorari. *Chetister v. Chetister,* 469 U.S. 805, 105 S.Ct. 62, 83 L.Ed. 2d 13 (1984). This Court later denied petitioner's motion for rehearing. *Chetister v. Chetister,* 469 U.S. 1067, 105 S. Ct. 554, 83 L.Ed. 2d 440 (1984).

Chetister then filed a complaint in the United States District Court for the Northern District of Ohio, naming as defendants the Ohio Supreme Court, the Ohio Court of Appeals, and the ten judges and justices sitting on those two courts who had considered petitioner's state court appeals. (Petition for Certiorari at pp. A-31 to A-56). In the District Court, petitioner sought declaratory and injunctive relief as well as attorney fees under 42 U.S.C. §1988 for respondents' alleged violations of petitioner's civil rights. Specifically, petitioner claimed that the Ohio Court of Appeals had violated her constitutional rights by grounding its affirmance of the state trial court's judgment on petitioner's failure to establish the elements of a cause of action in fraud, rather than upon the doctrine of laches, the basis for dismissal articulated by the state trial court. Petitioner claimed the Ohio Supreme Court had violated petitioner's constitutional right to petition the courts for redress of grievances and had deprived her of her right to due process by refusing to accept jurisdiction of her state court appeal. Plaintiff had not mentioned her due process rights or her right to petition the courts for redress of grievances in her state court appeals or in her motion for rehearing in the Ohio Supreme Court. (See pp. A-8 to A-31; A-33 to A-37).

The United States District Court adopted the Report of the Magistrate to whom the case had been referred and held that the U.S. District Court did not have subject matter jurisdiction over petitioner's complaint since petitioner sought to collaterally attack a state court judgment. The District Court also held that the complaint failed to state a claim upon which relief could be granted and granted respondents' motion to dismiss.

Chetister v. Douglas, Case No. C84-8077 (N.D. Ohio, East. Div., Jan. 10, 1986). (See Petition for Certiorari, at pp. A-21 to A-23).

Petitioner Chetister then filed a timely notice of appeal to the United States Court of Appeals for the Sixth Circuit which had "no difficulty in concluding that the district court acted properly in dismissing Chetister's complaint." (*Chetister v. Douglas,* Case No. 86-3057 (6th Cir., Jan. 13, 1987). (See Petition for Certiorari, at p. A-27). The Sixth Circuit Court of Appeals held that petitioner was, in reality, seeking review of the state courts' decisions in a federal district court and that federal district courts clearly do not have jurisdiction to hear appeals from state court decisions or collateral attacks upon state court judgments.

After the United States Court of Appeals for the Sixth Circuit affirmed the District Court's dismissal of petitioner's complaint, petitioner filed her petition for a writ of certiorari in this Court.

SUMMARY OF ARGUMENT

Petitioner has received and fully taken advantage of all of the process which is her due. She has vigorously exercised her right to petition the courts for redress of grievances.

Petitioner's federal court complaint against the state appellate courts and judges who considered her state court appeals is completely unwarranted and insupportable. Under well-established principles of law which have been considered and articulated over the years by this Court, the lower federal courts clearly did not have jurisdiction to hear petitioner's collateral attack upon the state appellate courts' judgments. This fundamental tenet of our nation's dual court system so clearly applies to bar plaintiff's federal court complaint that no real or substantial question could even arguably be presented by her petition for certiorari.

Furthermore, the cases petitioner claims are in conflict with the Sixth Circuit's opinion in this case are not remotely apposite, nor are they logically or theoretically in conflict with the Sixth Circuit's opinion.

ARGUMENT

I

PETITIONER HAS NOT ASSERTED SPECIAL AND IMPORTANT REASONS INDICATING THAT THIS COURT SHOULD EXERCISE ITS DISCRETION BY GRANTING THE PETITION FOR A WRIT OF CERTIORARI.

This Court's rules provide that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Sup. Ct. R. 17.1.

The standards governing this Court's discretionary power of review upon writ of certiorari are well-established and of long standing. This Court "does not sit to satisfy a scholarly interest in [federal questions]. . . . Nor does it sit for the benefit of the particular litigants . . . . 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74, 75 S. Ct. 614, 616, 99 L.Ed. 897, 901 (1955) (citations omitted). In 1923, this Court framed the following standard:

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393, 43 S. Ct. 422, 423, 67 L. Ed. 712, 714 (1923).

Petitioner's case presents claims already decided by this Court against petitioner's position in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 2d 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 1303 S. Ct. 103, 75 L.Ed. 2d 206 (1983), and other cases which clearly establish that state court judgments cannot be collaterally attacked by filing suit against the state court judges in federal district courts. Such collateral attacks are, for many reasons, not favored; they are an affront to our nation's dual court system. Petitioner's case presents no novel questions which have been left unanswered by *Rooker, Feldman,* and the other cases relied upon by the lower federal courts in finding that the district court did not have jurisdiction to hear plaintiff's collateral attack.

In noting that only this Court has jurisdiction to hear appeals from judgments of state supreme courts, the Sixth Circuit Court of Appeals stated:

> We have no difficulty in concluding that the district court acted properly in dismissing Chetister's complaint. We wholeheartedly agree with the observations of the magistrate, whose views were adopted by the district court, that:
>
> > [p]laintiff, by arguing that defendants unconstitutionally applied the Ohio statutes in question, is in reality seeking review of a state court by a federal district court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The Supreme Court held in *Feldman* that United States district courts 'do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges

> allege that the state court's action was unconstitutional.' *Id.* at 486. If a competent state court having jurisdiction has rendered judgment, and the case has been appealed through the state court system, then the only avenue for the correction of constitutional errors is to the appellate jurisdiction of the Supreme Court. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

Jt. App. p. 36.

> On authority of *Feldman, supra,* this court has also previously made clear that the district court lacks jurisdiction to review a decision of the Ohio Supreme Court even if the appellant raises federal constitutional issues. *Johns v. The Supreme Court of Ohio,* 753 F.2d 524, 527 (6th Cir.), *cert. denied,* 106 S.Ct. 79 (1985).

Chetister v. Douglas, Case No. 86-3057 (6th Cir., Jan. 13, 1987). (See Petition for Certiorari, at pp. A-27 to A-28).

This Court has, in fact, already exercised its appellate jurisdiction and denied review of this case. After the Ohio Court of Appeals affirmed the state trial court's directed verdict against petitioner and the Ohio Supreme Court refused to take jurisdiction, petitioner filed an appeal to this Court. This Court dismissed the appeal, refused to grant a writ of certiorari, and denied petitioner's motion for rehearing. *Chetister v. Chetister, supra,* 469 U.S. 805, 105 S. Ct. 62, 83 L.Ed. 2d 13; *Chetister v. Chetister, supra,* 469 U.S. 1067, 105 S. Ct. 554, 83 L.Ed. 2d 440. Thus, the constitutional allegations petitioner set forth in her complaint to the U.S. District Court concerning the state courts' denial of her constitutional rights have already been presented to this Court, or should have been presented in her first petition. This Court previously refused to exercise its discretion to accept jurisdiction over petitioner's claims. Respondents assert that petitioner did not present special and important reasons justifying her petition when she last peti-

tioned this Court to grant a writ of certiorari and that, as the state court proceedings attacked by petitioner were fully concluded before petitioner last petitioned this Court, the claims which allegedly support the petition remain the same. This Court should once again refuse to grant the petition for a writ of certiorari.

II

NONE OF THE CASES RELIED UPON BY PETITIONER TO ESTABLISH A CONFLICT BETWEEN THE CIRCUIT COURTS EVEN ARGUABLY CONFLICTS WITH THE SIXTH CIRCUIT'S OPINION IN THIS CASE.

A

THE SIXTH CIRCUIT'S OPINION IN THIS CASE DOES NOT CONFLICT WITH *ROBINSON V. ARIYOSHI.*

Petitioner alleges, on pages 5 and 6 of her petition, that the Sixth Circuit's opinion conflicts with *Robinson v. Ariyoshi,* 753 F. 2d 1468 (9th Cir. 1985).

Respondents first note that the Ninth Circuit's opinion in *Ariyoshi* was vacated by this Court on June 23, 1986. *Id., vacated and remanded sub nom. Ariyoshi v. Robinson,* ___ U.S. ___ 106 S. Ct. 3269, 91 L.Ed. 2d 560 (1986). See also *Robinson v. Ariyoshi,* 796 F. 2d 339 (9th Cir. 1986) (remanded to district court). The Sixth Circuit's opinion cannot possibly be in conflict with the opinion of the Ninth Circuit which was vacated before the Sixth Circuit issued its opinion.

The Ninth Circuit's 1985 opinion in *Robinson v. Ariyoshi* is, nonetheless, distinguishable from the present case. *Ariyoshi* was an action filed under 42 U.S.C. §1983 to enjoin state officials from taking action to enforce a state court judgment which threatened to divest plaintiffs of certain irrigation water rights. The Ninth Circuit's 1985 opinion discussed *District of Columbia Court of Appeals v. Feldman* and *Rooker v. Fidelity Trust Co.,* which the Sixth Circuit relied on in the present case in holding that federal district courts do not have jurisdiction to hear appeals from state courts or collateral attacks upon state court judgments. The vacated *Ariyoshi* opinion distinguished *Rooker* and *Feldman,* however, by noting that, in *Ariyoshi,* the state supreme court flatly refused to consider the federal

claims. *Robinson v. Ariyoshi,* 753 F.2d at 1472. Since the federal claims could not possibly have been litigated in the state courts, the Ninth Circuit refused to apply the *Rooker* and *Feldman* principles as a bar to the federal suit. *Id.* at 1473.

The situation in *Ariyoshi* is clearly distinguishable from Chetister's situation. The Ohio Supreme Court did not refuse to consider federal claims. Rather, the Ohio Supreme Court clearly would have had jurisdiction to hear petitioner's federal constitutional claims if petitioner had, at any time, asserted them. See Ohio Const., Art. IV, §2(B)(2)(a)(iii) and Ohio Rev. Code §2505.29 (appeal as of right in cases involving questions arising under the U.S. Constitution). Petitioner did not, however, assert any constitutional claims in her memorandum supporting her appeal to the Ohio Supreme Court (see pp. A-8 to A-31) and she cannot now rely upon that oversight to argue that the Ohio Supreme Court erred in failing to divine her later-conceived intent to assert constitutional claims.

Robinson v. Ariyoshi, having been vacated by this Court, cannot be in conflict with the Sixth Circuit's ruling in this case. Furthermore, *Ariyoshi* presents no conflict even if the Court disregards for the sake of argument the fact that the 1985 *Ariyoshi* opinion has been vacated.

B

THE SIXTH CIRCUIT'S OPINION IN THIS CASE DOES NOT CONFLICT WITH *WOOD V. ORANGE COUNTY.*

Petitioner next contends that the Sixth Circuit's opinion conflicts with *Wood v. Orange County,* 715 F. 2d 1543 (11th Cir. 1983). In her reply brief in the Sixth Circuit, petitioner argued that the *Wood* case, although not controlling in the Sixth Circuit, compelled a different result than that reached by the District Court.

Wood is clearly distinguishable. In *Wood,* plaintiffs alleged that their due process rights had been violated when liens for the value of legal services rendered by the county public defender's office were entered against plaintiffs following the conclusion of criminal cases against plaintiffs. The Eleventh Circuit Court of Appeals held that, since the liens were imposed following the conclusion of the state criminal cases, petitioners never had an opportunity to present their due process claims regarding the imposition of the liens during the state court litigation. Their due process claims did not arise until the liens were imposed after the state court cases had concluded and the judgments were final. *Wood v. Orange County,* 715 F.2d at 1548.

The opinion in *Wood* actually approves the holding in *Feldman,* and states that:

> *Feldman,* moreover, indicates that the *Rooker* bar also operates where the plaintiff fails to raise his federal claims in state court . . . . "By failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state court decision in any federal court." [*Feldman,*] ___ U.S. at ___ n. 16, 103 S.Ct. at 1315 n. 16, 75 L.Ed. 2d at 223 n. 16.

Wood v. Orange County, 715 F.2d at 1546-1547.

This is exactly the situation presented by the instant case. *Wood,* in which the plaintiffs did not have an opportunity to present their constitutional claims in the state court, is distinguishable from the instant case wherein petitioner, when presented with the opportunity to assert her federal claims in the state court proceedings, neglected to do so.

C

THE SIXTH CIRCUIT'S OPINION IN THIS CASE DOES NOT CONFLICT WITH *TESTA V. KATT* OR WITH *MONDOU V. NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.*

Petitioner next asserts, on pages 8-10 of her petition for certiorari, that the Sixth Circuit's opinion in this case conflicts with this Court's holdings in *Testa v. Katt,* 330 U.S. 386, 67 S. Ct. 810, 91 L.Ed. 967 (1947) and *Mondou v. New York, New Haven & Hartford Railroad Co.,* 223 U.S. 1, 32 S. Ct. 169, 56 L.Ed. 327 (1912). In both *Testa* and *Mondou,* state courts had declined to enforce federal laws since the states had "policies" against enforcing the laws of other jurisdictions. This Court held that, due to the Supremacy Clause of the U. S. Constitution (Art. VI, paragraph 2), the states' "policies" were not valid excuses for failing to enforce federal statutes. *Testa* and *Mondou* are clearly inapposite to the present case and are not in conflict with the Sixth Circuit's opinion. The Ohio Supreme Court did not assert that it had a policy against enforcing federal constitutional rights; the Ohio Supreme Court clearly does not have such a policy. See Ohio Const., Art. IV, §2(B)(2)(a)(iii); Ohio Rev. Code §2505.29. Petitioner never raised or asserted any federal constitutional claims in her state court appeals. (See, *e.g.,* pp. A-8 to A-31). If she had not neglected to present these claims, she would have had an appeal as of right to the Ohio Supreme Court. *Id.*

D
THE SIXTH CIRCUIT'S OPINION IN THIS CASE DOES NOT CONFLICT WITH *HARING V. PROSISE.*

Petitioner next asserts, at pages 10-11 of her petition, that the Sixth Circuit's opinion conflicts with this Court's judgment in *Haring v. Prosise,* 462 U.S. 306, 103 S. Ct. 2368, 76 L.Ed. 2d 595 (1983). The issue in *Haring* was whether a guilty plea in a criminal case bars a later 42 U.S.C. §1983 action against the arresting officers. This Court held that, in determining whether the prior state court judgment should be given preclusive effect, the federal courts should determine whether the state courts would give the judgment preclusive effect under state law. This Court found that, under Virginia law, a guilty plea in a criminal case would not be given preclusive effect. Since Virginia would not invoke collateral estoppel as a bar to a later case, this Court determined that the guilty plea did not foreclose plaintiff from litigating the civil rights action regarding the constitutionality of the search.

Haring has absolutely no bearing on the present case. Neither res judicata nor collateral estoppel was asserted as a defense by respondents in the Sixth Circuit. As a matter of fact, respondents determined that Ohio law on the preclusion issue, while not entirely settled, appeared to require identity of the parties in the two cases. Since respondents were not parties to petitioner's state court case, respondents did not pursue the argument that res judicata barred petitioner's suit.

Since neither the District Court nor the Sixth Circuit held that the doctrine of res judicata or collateral estoppel barred petitioner's suit (see Petition for Certiorari, pp. A-21 to A-28), the opinion and decision in *Haring, supra,* are inapposite to this case. This Court's decision in *Haring* does not conflict with the Sixth Circuits' opinion since the two cases deal with different issues and different legal principles.

E
THE SIXTH CIRCUIT'S OPINION IN THIS CASE DOES NOT CONFLICT WITH *KREMER V. CHEMICAL CONSTRUCTION CO.*

As her final attempt to allege a "real and embarrassing conflict" between federal cases, petitioner alleges, on pages 11-13 of her petition, that the Sixth Circuit's opinion in this case conflicts with this Court's opinion in *Kremer v. Chemical Construction Co.*, 456 U.S. 461, 102 S. Ct. 1883, 72 L.Ed. 2d 262 (1982).

Kremer, like *Haring, supra*, dealt with the federal courts' duty to give full faith and credit to state court judgments by according preclusive effect to state court judgments to the same extent that a state court would give the judgment preclusive effect. Once again, respondents point out that they did not allege that petitioner's federal suit was barred by the doctrines of res judicata or collateral estoppel, nor did either of the federal courts below rely upon these legal theories in denying petitioner relief. (See Petition for Certiorari, pp. A-21 to A-28).

Kremer's holding, that a state court judgment may not, consistent with due process, be given preclusive effect unless the state court proceedings give the plaintiff a full and fair opportunity to litigate his claims, is simply irrelevant to this case in which no state court judgment was ever given preclusive effect. The following comments in *Kremer* are, however, applicable to this case in support of respondents' position: "We have little doubt that Kremer received all the process that was constitutionally required .... The fact that Mr. Kremer failed to avail himself of the full procedures provided by state law does not constitute a sign of their inadequacy." *Kremer v. Chemical Construction Co., supra*, at 483, 485, 102 S. Ct. at 1898, 1899, 72 L.Ed. 2d at 281, 282.

CONCLUSION

Petitioner has submitted no special and important reasons indicating that this Court should grant her petition for certiorari, nor has she presented any real conflicts between the federal courts which this Court might wish to resolve for the benefit of the public. Rather, petitioner, who neglected to present her constitutional claims to the Ohio courts when she had the opportunity to do so, once again petitions this Court in an attempt to rectify ordinary errors or omissions, not of constitutional dimensions, which she made in the presentation of her state court appeals. Petitioner has received all of the process which is her due under well-established principles of law and has fully exercised her right to petition the courts. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

TRANSCRIPT OF ORAL DECISION OF STATE TRIAL COURT

to get title because she signed the mortgage. She's admitted that nobody told her she was going to have the house, and I don't think you can hold my client responsible because of something she thought.

MR. DONNELL: Mr. Wittenberg, she didn't give a mortgage. He took title, and then she gave a mortgage to SBA with your client for $18,650. No. He took title. She had to -- or she couldn't have given a mortgage on it. When she signed the mortgage, she was titled, and quitclaim deed took her off the title. That is fact.

THE COURT: Well, all right. As to the cause of action for damages for the carpeting and the freezer repair and the lawnmower and bookcases, whatever items were paid for in Exhibits 6 through 13, I am granting the motion for directed verdict, I think, for several reasons. First of all, there is no contention that there was any written or verbal contract in which the Defendant was indebted to the Plaintiff for these amounts.

Secondly, the action is predicated on a fraud. If she thought that there was fraud, she should have known it the day in August when she left that house and should have made her claim. If there was fraud evident to her, it was then, and she's brought no action until apparently May of 1982.

In addition, there is a lot of case law that applies to the equitable doctrine of laches and estoppel to non-equitable cases. If there is a case in which it should be applied, this is one.

As to the other cause of action, parties have already agreed that there shall be a lien placed upon the real estate of the

Defendant and in favor of the Plaintiff in an amount equal to any deficiency she might suffer in the future for foreclosure of the mortgage, sale of the property or loss to the property by casualty.

In addition, it is agreed and is ordered that the Defendant shall keep the property insured in an amount not less than the pay-off, principal and interest on this mortgage and shall see through his insurance agent that the Plaintiff receives a memorandum copy of that policy.

It's also ordered that the lien of the Plaintiff shall be extinguished upon the release and satisfaction of this mortgage of April 2, 1974, to the Small Business Administration. That's the order of the Court. Now, let's send the jury home.

(End of proceedings in chamber.)

- - -

4:32 p.m.

THE COURT: Ladies and gentlemen of the jury, your services in this case will no longer be necessary because the Court has disposed of this case as a matter of law. And for reasons that will more fully have been set out on the record, the Court has ordered that as to the claim of the Plaintiff for the damages; that is, for carpeting and the freezer seal and the lawnmower and bookcases and whatever else, that that claim is barred by the statute of limitations and by the doctrine of laches; and that is, the claim was not brought soon enough, and therefore is not justiciable at this time.

As to the matter of signature on the mortgage the Court has ordered and the parties have agreed that because the only damage the Plaintiff could suffer as a result of that mortgage would be a deficiency judgment in case of foreclosure or casualty loss or, I suppose, sale, and that because she has not

present damage as a result of that, that there is a lien placed on the Defendant's property in whatever amount any deficiency loss the Plaintiff may suffer due to foreclosure or casualty loss.

The Court also ordered that the Defendant maintain casualty insurance on the property in an amount not less than the pay-off of both the principal and interest to the mortgage and that such insurance policy be -- by the way, I'm told that he has, but we're formalizing this in a court order -- that such policy or memorandum copy of that be filed or be given to the Plaintiff.

The Court has further ordered that any lien in favor -- or that this lien in favor of the Plaintiff would be extinguished upon release and satisfaction of the mortgage to the Small Business Administration. The cause is dismissed. You are excused. I would like to talk to you for a moment, if you'd wait in the jury room.

Counsel for the Defendant will journalize, and this matter is dismissed at Plaintiff's costs. I'll be with you shortly.

(Proceedings concluded at 4:35 p.m.)

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APPENDIX B

COURT OF APPEALS OF OHIO, SIXTH DISTRICT
COUNTY OF LUCAS
C. A. NO. L-83-318

Lavaun Chetister APPELLANT	APPEAL FROM LUCAS COUNTY COMMON PLEAS COURT
v.	No. CV 82-1161
James G. Chetister, et. al. APPELLEES	DECISION AND JOURNAL ENTRY

DATE: *February 3, 1984*

(Filed February 3, 1984, Lucas County Court of Appeals)

This cause came on to be heard upon the record in the trial court. Each assignment of error was reviewed by the court and upon review the following disposition made:

This is an appeal from the Court of Common Pleas of Lucas County, Ohio. On August 24, 1983, the court granted appellees' motion for a directed verdict as to appellant's cause of action for damages. On September 1, 1983, appellant filed a motion for a new trial. On September 16, 1983, such motion was overruled.

From these judgments, appellant, Lavaun Chetister, filed a timely appeal, stating the following assignments of error:

> "1. The court erred in granting the motion of defendant-appellee for a Directed Verdict pursuant to Civ. R. 50(A)(4).

2. The judgment is contrary to law."

Because of similarity of content, appellant's first and second assignments of error will be considered together. Appellant contends, in essence, that the alleged fraudulent acts of the appellees induced her to inadvertently sign a quitclaim deed.

In the case of Friedland v. Lipman (1980), 68 Ohio App. 2d 255, at the first paragraph of the syllabus, the court determined that a claim of common law fraud requires proof of a representation or concealment of a fact which is material to a transaction, is made with knowledge of its falsity or with utter disregard for its veracity, with the intention of misleading another into justifiably relying upon it and which reliance is the proximate cause of the plaintiff's injury.

The record in this case reveals that the appellant failed to present any evidence as to any of the elements noted in Lipman, supra. Appellant admitted upon cross-examination that no one had represented to her that the quitclaim deed she signed was a mortgage paper. She had just assumed that the deed was a loan paper presented for her signature. Appellant further testified that no one ever told her that half of the real property located at 8650 Arquette Road, Oregon, Ohio, belonged to her.

Appellant further admitted at trial that she had had the present ability and the opportunity to read all of the documents which she signed on the date in question, but that she had, of her own volition, neglected to do so. In Dice v. Akron, Canton & Youngstown Rd. Co. (1951), 155 Ohio St. 185, the Supreme Court made the following determination with regard to a person's volitional omission to read a legal paper before signing it:

> "A person of ordinary mind cannot say that he was misled into signing a paper which was different from what he intended to sign when he could have known

> the truth by merely looking when he signed. DeCamp v. Hamma, Exr., supra (29 Ohio St. 467), 471, 472. If this were permitted, contracts would not be worth the paper on which they are written. If a person can read and is not prevented from reading what he signs, he alone is responsible for his omission to read what he signs. * * *"Dice v. Akron, Canton & Youngstown Rd. Co., supra, at 191, rev'd. on other grounds, (1952) 342 U.S. 359.

Cf. Leedy v. Ellsworth Construction Co. (1966), 9 Ohio App. 2d 1, wherein the court determined that:

> "2. A signer of a mortgage, who is of ordinary mind and can read and is not prevented from reading what he signs and who signs an instrument which is, in fact, a mortgage and denominated as such thereon, is negligent in signing such paper without reading it and *does not have a defense thereto on the ground of fraud by claiming that the paper he signed was something other than what it actually was."* (Emphasis added.)(See second paragraph of the syllabus.)

Clearly, when the evidence adduced at trial is construed most strongly in favor of the appellant, reasonable minds can only conclude that, based upon the evidence submitted, appellant has failed to prove all the elements necessary to establish a cause of action for fraud.

Pursuant to Civ. R. 50(A)(4), we find that the trial court properly granted the motion for a directed verdict and that said decision is not contrary to law. Having so determined, we will not consider the issue of the statute of limitations. For these reasons, appellant's assignments of error Nos. 1 and 2 are found not well taken.

On consideration whereof, the court finds that substantial justice has been done the party complaining, and judgment of the Court of Common Pleas of Lucas County is affirmed. This cause is remanded to said court for execution of judgment and assessment of costs.

Costs to appellant.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

Andy Douglas _____ PRESIDING JUDGE

Peter M. Handwork, and _____ JUDGE

Alice Robie Resnick, JJ., _____
CONCUR. JUDGE

APPENDIX C

IN THE SUPREME COURT OF OHIO

Lavaun Chetister, Plaintiff-Appellant,	:	Supreme Court No. 84-336
v	:	C.A. No.-L 83-318 (Lucas County) (SIXTH APPEALS)
James G. Chetister, Defendant-Appellee.	:	C.P. NO.-82-1161

MEMORANDUM

in

SUPPORT OF CLAIMED JURISDICTION OF SUPREME COURT

of

Appellant LaVaun Chetister

(filed February 24, 1984 in the Ohio Supreme Court)

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Proposition of Law No. 1: In an appeal from a trial court's directed verdict to a court of appeal, where reviewing court sustains the trial court for a reason or reasons other than those written into the entry or dictated into the record and argued separately by appellant in her brief, and where reviewing court does not first pass upon the basis of the decision set forth and argued by appellant in her brief, the court of appeals commits an irregularity in obtaining judgment on review and it shall be vacated. (Rule 12(A) of the Rules of Appellate Procedure construed and harmonized with Civil Rule 50(E).)

Proposition of Law No. 2: The significant purpose of Civil Rule 50(E) is to enable a party to challenge the trial court's ruling on appeal, and where the court of appeals intends to sustain the trial court's ruling upon a reason or reasons other than those stated in writing by the trial court and argued separately by appellant in her brief, it shall, before rendering its decision, notify the appellant of its reason or reasons and allow appellant ten (10) additional days to respond to them, and this written response shall be considered by the court of appeals before it shall render its decision in the case. (Rule 12(A) of the Rules of Appellate Procedure amended accordingly and submitted by the Supreme Court to the General Assembly on _____ and shall take effect on _____.)

Proposition of Law No. 3: In a motion for a directed verdict timely made and in the proper form, and where the plaintiff

gives conflicting evidence in support of any or all elements of her case, nonetheless, the trial court shall not grant a directed verdict since determing whether reasonable minds could come to but one conclusion upon the evidence submitted does not involve any weighing of the evidence nor is the court concerned with the credibility of witnesses. (*Ruta v. Breckenbridge-Remy Co.* (1982), 69 Ohio St.2d 66 followed.)

Proposition of Law No. 4: Upon a motion for a directed verdict, neither the reviewing court or the trial court is permitted to select those portions of the evidence it will consider or consider the credibility of the witness giving it.

Proposition of Law No. 5: In a motion for a directed verdict where every element of plaintiff's case is supported by direct proof or evidence upon which a reasonable inference may be predicated to support each such element, and though the state of the evidence reveals conflicting testimony, it is the jury, and not the trial court or reviewing court, who is entitled to believe all or part of the testimony of any witness. (*Cothey v. Jones-Lemley Trucking Co.*, 176 Ohio St. 342 followed.)

Proposition of Law No. 6: Upon a motion for a directed verdict, a trial court shall examine the materiality of the evidence as it relates to the elements of the case, as opposed to the conclusions to be drawn from the evidence, and this applies to the reviewing court.

Proposition of Law No. 7: The determination concerning what constitutes a confidential (fiduciary) relationship is a question of fact dependent upon the circumstances in each case,

and where one with an eighth-grade education is induced to sign a quitclaim deed without reading it and without knowing it was a quitclaim deed and believing it was a loan paper under a pile of loan papers in reliance on the other party's statement that the papers to be signed were loan papers, and where the

the two parties had a long period of marriage followed by a divorce that was followed quickly by a discussion about getting back together again, which was quickly followed by their joint signing of a mortgage deed and note for a house in which both cohabited thereafter for a period of over four months during which the relying party paid for and had installed wall to wall carpeting in two rooms and a hallway and paid for hundreds of dollars of other improvements to the house, the relying party has the right to have a jury determine the issues as to whether or not there was a confidential relationship, whether or not there was fraud, and the amount of money damages, if any. (*Stone v. Davis* (1981), 66 Ohio St.2d 74 followed; *Indermill v. United Savings* (1982), 5 Ohio App.3d 243 approved.)

I. STATEMENT OF THE CASE:

A. Nature of The Case:

This is a civil case in fraud, and comes before this Court pursuant to an affirmance by the Sixth Court of Appeals of a directed verdict judgment granted by the Honorable Richard McQuade, Judge, Common Pleas Court of Lucas County, pursuant to Civ.R 50, on August 21, 1983.

Plaintiff-appellant Lavaun Chetister amended her complaint once, eliminating her demand for a recision of an alleged 1974 quitclaim deed fraudulently obtained from her by her ex-husband and defendant-appellee herein, James G. Chetister. Case originally filed May 12, 1982.

Her amended complaint prayed only for $4,600.00 in compensatory damages and $20,000.00 punitive damages and her costs. A jury demand was endorsed thereon.

B. PROCEEDINGS AND PROCEDURAL DISPOSITION BELOW:

Trial was first scheduled for March 16, 1983, before the Honorable Bruce Huffman, Judge, but was continued by the court. Subpoenas were cancelled.

The next scheduled trial date was May 13, 1983, but again was continued by the court. Again, plaintiff notified witnesses of events.

Finally, after almost five months of court-imposed delays, plaintiff's case in fraud reached a jury of her peers on August 3, 1983. Plaintiff called four witnesses and hereself and placed twenty exhibits into evidence, and rested her case in chief. It was almost four o'clock in the afternoon.

Trial Judge Richard McQuade called counsel into chambers and asked if anyone had motion to make. Defendant-appellee's counsel moved for a directed verdict. It was granted, and the trial judge immediately dictated into the record three (3) reasons for the basis of his decision:(1) "No written or verbal contract in which Defendant was indebted to the Plaintiff", (2) Statute of limitations:"If she thought there was fraud, she should have known it the day in August (1974) when she left that house and should have made her claim. If there was fraud evident to her, it was then, and she's brought no action until apparently May of 1982", and (3) Laches:"In addition, there is a lot of case law that applies to the equitable doctrine of laches and estoppel to non-equitable cases. If there is a case in which it should be applied, this is one."

Plaintiff-appellant timely filed a Motion For A New Trial. This was denied in a judgment entry filed September 16, 1983.

Plaintiff-appellant timely filed a Notice of Appeal to the Sixth Court of Appeals sitting in Lucas County, and timely followed this with her brief that listed, not once but twice, the three reasons given by the trial court for its directed verdict pursuant to Civ.R 50(E). The trial court's reasons for the directed verdict were set forth in plaintiff-appellant's brief by direct quotes from the record at the beginning of her argument and during her argument. (Transcript of trial, pp. 142-143, see Appendix, pp. 29, 30).

What did the Sixth Court of Appeals do or say about the three (3) reasons given by the trial court for the directed verdict, and separately argued by plaintiff-appellant in her brief?

Nothing. Absolutely nothing. In a unanimous decision written by the Honorable Andy Douglas, Presiding Judge, the Sixth Court of Appeals did not pass upon the three reasons given by the trial judge and argued by appellant separately in her brief.

Instead, it came up with a reason peculiar to itself:

> "(A)ppellant has failed to prove all the elements necessary to establish a cause of action for fraud.
>
> "Pursuant to Civ. R. 50(A)(4), we find that the trial court properly granted the motion for a directed verdict and that said decision is not contrary to law. Having so determined, we will not consider the issue of the statute of limitations. For these reasons, appellant's assignments of error Nos. 1 and 2 are found not well taken."
>
> (Lines 14-19, Decision and Journal Entry filed February 3, 1984, see Appendix, p. 20).

C. STATEMENT OF FACTS:

To keep distortion to a minimum, appellant will quote facts directly from the transcript of the trial:

In Area Of Confidential Relationship:

Appellant Lavaun Chetister testified: "I went all the way through my eighth grade and December of my ninth (sic) grade" (T-71, 3-5); married to defendant-appellee James Chetister for "twenty-six years." (T-63,21-22); obtained a divorce "February 13th, 1974" (T-66,1-2); in March of 1974 James Chetister went to Lavaun's apartment in Perrysburg in the evening hours and talked to Lavaun about "getting back together again". (T-67, 9-17).

In Area of (a) a representation (b) material to transaction (c) made falsely (d) with intent of misleading another into relying upon it:

A few days later—-- "a day or two before" April 2, 1974, James Chetister telephoned Lavaun Chetister and "said that there was (sic) loan papers to be signed and asked me if I would take and meet him at Hattery Realty on Woodville Road." (T-68, 5-11); on April 2, 1974, she went to Hattery Realty to sign "loan papers" and present was everybody but an attorney (T-68,6-8):

> "I was setting (sic) to the right of Jim. Mr. Hattery was setting (sic) to the left of him. Mr. Knuth was across from us, and there was another gal which was the secretary in there. There was no one else." (T-68,22-23; 69, 1-2).

But James Chetister did have an attorney, one Mervin Sharfman, and appellee had him prepare a quitclaim deed (Plaintiff's Exhibit No. 2), and appellee brought this to the closing at Hattery Realty that April 2, 1974. (T-14, 4-12).

When asked about the absence of his attorney at the closing at Hattery Realty, appellee simply said an attorney "wasn't needed." (T-17, 19-23).

Yet just seven months before, appellee had "that very same attorney, Mervin Sharfman", present when appellee and appellant signed another mortgage. (T-12,16-23; 13, line 1).

In Area Of Justifiable Reliance, element(e) of fraud:

"Q Did you rely upon the words of Jim of those loan papers when you signed?
"A Yes, I did." (T-71,8-10).
"Q ...did you hear Mr. Chetister tell you that those were loan papers, you heard those words, loan papers?
"A Yes, when he called me.
"Q ...until you signed that paper April 2nd, did he ever say there was something besides loan papers there?
"A No." (T-131, 4-12).
"Q Did you rely upon his statement they were loan papers?
"A Yes, I did." (T-131, 17-19).

In Area Of (f) Resulting Injury Proximately Caused By Reliance:

(By Mr. Wittenberg, appellee's counsel):
"Q If I understand your testimony, you believed that that house until sometime in 1982 was half yours?
"A Yes, sir." (T-125, 2-4).
"Q Did you make any payments on this, the Arquette Road house?
"A I made one on that.
"Q How much was that payment?
"A It was $120. (sic)"(T-88,8-12).

And during the four and one-half months that appellant and appellee lived together in the house following the April 2, 1974, real estate closing at Hattery's, appellant—-believing that the house was "half" hers—-- made over a thousand dollars worth of improvements to the house, including "wall-to-wall carpeting" in two rooms and a hallway (T-76, 11-19),cooking range installed in the kitchen (T-77, 9-19) and "four rose bushes" appellant bought and planted in the yard on or about July 20, 1974 (T-25, 2-4):

> "Q Did you ever have occasion to add up what these came to?
> "A Uh-huh. They come (sic) up to $1,237. (sic)
> "Q That you paid in improvements in that Arquette Road house?
> "A Yes, sir.
> "Q Did you at the time you did this, did you believe this house was yours?
> "A Yes, I did." (T-92, 12-19).

And appellant today is still under obligation, along with appellee, to pay off "about $9,000.00 on the Arquette Road house". (T-8, 8-10).

Appellant "first learned there was a quitclaim deed existing" on or about February 28, 1982 (T-72, 17-23), and "when I found out about it, I was stunned." (T-73, 1-13).

Appellant Did Give Conflicting Evidence:

> "Q Now did you have an opportunity to read the papers underneath?
> "A No, I did not." (T-70, 9-14).

On cross: "Q Did anyone stop you from reading any papers?
"A No." (T-111, 10-13).

II. ARGUMENT:

QUESTION: Why should Supreme Court of Ohio take jurisdiction in *Chetister?*

ANSWER: *To prevent legal larceny of the jury by lower courts in Ohio. To construe AppR. 12(A) and harmonize it with CivR. 50(E).*

ISSUE: Did Court of Appeals for Sixth District commit an irregularity when it sustained the trial court's directed verdict for a reason other than those written in the basis of decision of the trial court and argued separately on appeal in appellant's brief, without first passing upon the trial court's reasons?

Stated another way:
Did Court of Appeals for Sixth District destroy appellant's right, as a practical matter, to effectively challenge the trial court's ruling on appeal (the significant purpose of CivR. 50(E), when it sustained the trial court's directed verdict for a reason other than those given by the trial court, without first passing upon the reasons of the trial court that were argued separately by appellant in her brief?

In her argument, appellant will discuss her seven propositions of law in three groups: No. 1 and No. 2; No. 3, 4, 5, and 6; and No. 7 by itself.

Proposition of Law No. 1: *In an appeal from a trial court's directed verdict to a court of appeal, where reviewing court sustains the trial court for a reason or reasons other than those written intc the entry or dictated into the record and argued separately by appellant in her brief, and where reviewing court does not first pass upon the basis of the decision set forth and argued by appellant in her brief, the court of appeals commits an irregularity in obtaining judgment on review and it shall be vacated.* (Rule 12(A) of the Appellate Procedure construed and harmonized with Civil Rule 50(E).

Proposition of Law No. 2: *The significant purpose of Civil Rule 50(E) is to enable a party to challenge the trial court's ruling on appeal, and where the court of appeals intends to sustain the trial court's ruling upon a reason or reasons other than those stated in writing by the trial court and argued separately by appellant in her brief, it shall, before rendering its decision, notify the appellant of its reason or reasons and allow appellant ten (10) additional days to respond to them, and this written response shall be considered by the court of appeals before it shall render its decision in the case.* (Rule 12(A) of the Rules of Appellate Procedure amended accordingly and submitted by the Supreme Court to the General Assembly on _____ and shall take effect on _____.)

Authorities In Support As They Appear:

1. *Baker v. McKnight* (1983), 4 Ohio St.3d 125.
2. Rule 50(E) of Civil Rules of Civil Procedure, Appendix pp. 25, 26.
3. Rule 12(A) of Rules of Appellate Procedure, Appendix, pp. 27, 28.
4. 4 Corpus Juris Secundum, "Appeal and Error", 88, Section 20.
5. *Van De Ryt v. Van DeRyt* (1966), 6 Ohio St. 2d 31.

The purpose of appellant's argument is to get jurisdiction in the Supreme Court of Ohio so that this Court can construe AppR. 12(A) and CivR. 50(E). Without such construction and guidance for the lower courts, "the efficient administration of justice"[1] oozes out of the crack of disharmony now existing between AppR. 12(A) and CivR. 50(E).

---

[1]Supreme Court of Ohio has acknowledged on numerous occasions, *Baker*, supra.

In the recent case of *Baker v. McKnight* (1983), 4 Ohio St.3d 125, Justice Sweeney and a majority of the Court found no hesitancy in construing CivR. 3(A) and 15(C) in order to bring justice to the application of the relate-back provision of Rule 15(C) to Rule 3(A).

And Justice William B. Brown, joined by Justice Holmes, stated that:

> "The purpose of the Ohio Rules of Civil Procedure, as this court has acknowledged on numerous occasions, is to give guidance to the practicing bar and to promote the efficient administration of justice." (P. 131,6-8).

And even though Justice Brown went on to say that "this purpose will be severely undermined if this court re-interprets and re-defines a particular rule of procedure periodically", appellant can find no interprets or "re-interprets" by this court of AppR. 12(A) as it relates to CivR. 50(E).

Further, Justice Holmes in his dissent made it clear that "court interpretations of rules of procedure" are proper "upon review if a sound and reasonable basis for such is presented." (P. 131, lines 25-29).

Appellant believes such a "basis" is found in the following:

Rule 50(E) states:

"When in a jury trial a court directs a verdict or grants judgment without or contrary to the verdict of the jury, the court shall state the basis for its decision in writing prior to or simultaneous with the entry of judgment. Such statement may be dictated into the record or included in the entry of judgment."

The Official Staff Note accompanying CivR. 50(E) notes that the purpose of the requirement of a written basis for decision "is obvious": the court's ruling substitutes for a function of the jury; must "be set forth clearly."

> The significant purpose of Civil Rule 50(E) is to enable a party to challenge the trial court's ruling on appeal.

> Appellate Rule 12(A) states:

> "Errors not specifically pointed out in the record and separately argued by brief may be disregarded. All errors assigned and briefed shall be passed upon by the court in writing, stating the reasons for the court's decision as to each such error."

Appellant believes, and urges this Court to construe this to mean, that the court of appeals shall pass upon the reason or reasons stated by the trial court in Rule 50(E) and argued separately by brief on appeal.

Otherwise, the court of appeals in a Rule 50(E) setting could on its own destroy the significant purpose which the Supreme Court of Ohio gave to Rule 50(E) under its rule-making powers: to enable a party to challenge the trial court's ruling on appeal, and in particular the Court of Appeals sitting in the Sixth District.

What practical effect of NOTICE did appellant Lavaun Chetister receive in the instant case--- to challenge the trial court's ruling on appeal--- when the Sixth Court of Appeal ignored--completely ignored-- the three (3) reasons given by the trial court for its decision and argued separately by appellant in her brief on appeal? (See appendix, pp.29, 30, copy of the basis of the decision dictated into the record by trial Judge Richard McQuade).

Appellant might just as well not written her brief. For the Supreme Court to allow the Sixth Court of Appeals to do this is prejudicial to appellant and procedurally unpalatable with CivR. 50(E).

Further, the Civil and Appellate Rules would, appellant believes, eventually become a hotchpotch with twelve cooks—-- a jumbled mixture of stew from the twelve districts with one reviewing court putting in too little salt and another too much pepper.

Viewing the procedural conduct of the Sixth Court of Appeals in its best light shines no light on "the efficient administration of justice" that appellant had a right to expect under Rule 50(E). The Supreme Court made Rule 50(E) enabling appellant to challenge the trial court's ruling on appeal; the Sixth destroyed it and appellant, without justice or a fair fight.

Often heard is the expression that every litigant is entitled to a trial and at least one review. And it is stated in 4 Corpus Juris Secundum, "Appeal and Error", 88, Section 20:

"Being remedial, appeals and the right of appeal, are favored by the law." In Ohio, the Supreme Court makes procedural rules that must be adhered to in legal proceedings. In *Van DeRyt v. Van DeRyt* (1966), 6 Ohio St.2d 31, the Supreme Court defined "irregularity" which is the basis for vacation:

"Want of adherence to some prescribed rule or mode of proceeding." (p.39). Appellant believes that the Court of Appeals for the Sixth District[2] committed an "irregularity" when it gave a reason of its own in sustaining the trial court's directed verdict without first passing upon the reasons stated in the basis of decision of the trial court and argued separately on appeal by appellant in her brief.

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[2]The Court of Appeals for the Sixth District is no stranger to challenging rules. In *Smith v. Klem* (1983), this court of appeals reviewed the Supreme

Appellant further believes that the Supreme Court could reduce its caseload in a small way by amending AppR. 12(A), so that 12(A) would require a court of appeals to give an appellant ten (10) additional days to respond to the reasons given by the reviewing court when it intends to sustain the trial court's judgment on grounds other than those stated by the trial court and argued separately in appellant's brief. The amendment should also require the court of appeals to consider appellant's written response before rendering its decision.

This would allow more issues to be resolved at the court-of-appeals level. At the least, more sifting and thrashing of the chaff would take place.

Proposition of Law No. 3: *In a motion for a directed verdict timely made and in the proper form, and where the plaintiff gives conflicting evidence in support of any or all elements of her case, nonetheless, the trial court shall not grant a directed verdict since determining whether reasonable minds could come to but one conclusion upon the evidence submitted does not involve any weighing of the evidence nor is the court concerned with the credibility of witnesses. (Ruta v. Breckenridge - Remy Co.* (1982), 69 Ohio St.2d 66 followed.)

Proposition of Law No. 4: *Upon a motion for a directed verdict, neither the reviewing court or the trial court is permitted to select those portions of the evidence it will consider or consider the credibility of the witness giving it.*

---

note 2 cont'd. Court's decision in another case, *State, ex rel. Smith, v. Court* (1982), 70 Ohio St.2d 213, and "concluded that the second paragraph of the syllabus was obiter dictum and had no prededential value." It could have saved itself possible embarrassment by first looking at one of its own decisions 24 years before, in *McGilvery v. Shadel*, 87 Ohio App. 345, 95 N.E. 2d 1 (1949) where its own syllabus stated: "In 1858 the rule was established that the syllabus of a case decided by the Supreme Court of Ohio states the law of that particular case, ***."

Proposition of Law No. 5: *In a motion for a directed verdict where every element of plaintiff's case is supported by direct proof or evidence upon which a reasonable inference may be predicated to support each such element, and though the state of the evidence reveals conflicting testimony, it is the jury, and not the trial court or reviewing court, who is entitled to believe all or part of the testimony of any witness. (Cothey v. Jones-Lemley Trucking Co.,* 176 Ohio St. 342 followed.)

Proposition of Law No. 6: *Upon a motion for a directed verdict, a trial court shall examine the materiality of the evidence as it relates to the elements of the case, as opposed to the conclusions to be drawn from the evidence, and this applies to the reviewing court.*

Authorities In Support As they Appear:

1. *Ruta v. Breckenridge - Remy Co.* (1982), 69 Ohio St.2d 66, 23 003d 115.
2. *Cothey v. Jones-Lemley Trucking Co.* (1964), 176 Ohio St. 342, 27 002d 281.

The following is intended to show that both, the trial court and the Court of Appeals for the Sixth District, improperly weighed the evidence, considered the credibility of witnesses, and improperly selected those portions of the evidence that each wanted to consider in support of a directed verdict.

First, the trial court: A close reading of the transcript of the trial shows that there was no evidence that appellant Lavaun Chetister should have discovered the fraudulent quitclaim deed before she actually discovered it on or about February 28, 1982, eight (8) years after its executuion. The only evidence in this area is found at T-73, lines 11-13:

> "Q Had you any reason whatsoever to know that that quitclaim deed existed?
> "A No way. When I found out about it, I was stunned."

And on cross examination, appellant had this to say:

"Q If I understand your testimony, you belived that that house until sometime in 1982 was half yours?
"A Yes,sir." (T-125, lines 2-4).

But this is what the trial court had to say:

The Court: "Now, you have to *convince me,* you have to *convince me and the jury* that as to damages she's saying, Look, I didn't know I signed a quitclaim deed, now I found it out. Now, there was fraud committed on me, and so now I'm entitled to these damages for carpeting, for the freezer seal, for the bookcases and for whatever it was." (Emphasis appellant's).

Mr. Donnell: "She thought the house was hers, that she was still titled owner, and that what she put in there --

The Court: "That stretches credibility."

Appellant can only say that the trial court's credibility can be stretched to Wauseon and back to Toledo and out over Lake Erie, it matters not. *Ruta,* supra, makes it clear that the jury, and not the trial court, is to be concerned with the credibility of any witness. (P. 116, lines 30-36).

Further, appellant does not have to "convince" both, the trial court "and the jury". The Supreme Court in *Ruta* also made it clear that in a directed verdict setting, "(d)etermining whether 'reasonable minds could come to but one conclusion upon the evidence submitted' *does not involve any weighing of the evidence,* nor is the court concerned with the credibility of witnesses." (T-116, lines 28-36). (Emphasis appellant's). The trial court erred.

Another example: the trial court drawing a conclusion from the evidence:

THE COURT: "Secondly, the action is predicated on a fraud. If she thought that there was fraud, *she should have know it the day in August* when she left the house and should have made her claim. If there was fraud evident to her, *it was then,* and she's brought no action until apparently May of 1982." (T-142, 20-23; 143, 1-2). (Emphasis appellant's).

What does the Supreme Court in *Ruta,* supra, have to say about a trial court drawing conclusions from the evidence in a directed verdict setting?

> "A motion for a directed verdict raises a question of law because it examines the materiality of the evidence, as opposed to the conclusions to be drawn from the evidence." (*Ruta,* p. 117, lines 8-12).

Once again, the trial court erred, measured by *Ruta* (1982).

Second, the Court of Appeals for the Sixth District:

The court of appeals improperly weighed the evidence and selected those portions of the evidence that it wanted to consider in order to sustain the trial court on appeal. Example: Judge Douglas speaking for the court:

> "*The record in this case reveals that the appellant failed to present any evidence as to any of the elements* noted in Lipman, supra. Appellant admitted upon cross-examination that no one had represented to her that the quitclaim deed she signed was a mortgage paper. *She had just assumed that the deed was a loan paper presented for her signature."* (Emphasis appellant's). See appendix, p. 19, lines 8-13).

To really appeciate the improper selection of evidence by the court of appeal in order for it to make the broad and erroneous statement that the "record in this case reveals that the appellant *failed to present any evidence as to any of the elements* noted in Lipman", one should reread appellant's statement of facts quoted directly from the trial transcript. However, some of the evidence that got by the selection process of the court of appeals are:

In the area of the elements of (a) a representation (b) material to the transaction (c) made falsely (d) with intent of misleading another into relying upon it:

> "(A) day or two before" April 2, 1974, James Chetister telephoned Lavaun Chetister and "said that there was (sic) loan papers to be signed and asked me if I would take and meet him at Hattery Realty on Woodville Road." (T-68, lines 5-11; on April 2, 1974, she went to Hattery Realty to sign "loan papers" and present was everybody but an attorney. (T-68, lines 6-8).

In the area of (e) justifiable reliance:

> "Q Did you rely upon the words of Jim of those loan papers when you signed?
> "A Yes, I did." (T-71, lines 8-10).
> "Q ...Did you hear Mr. Chetister tell you that those were loan papers, you heard those words, loan papers?
> "A Yes, when he called me.
> "Q ...until you signed that paper April 2nd, did he ever say there was something besides loan papers there?
> "A No." (T-131, lines 4-12).
> "Q Did you rely upon his statement they were loan papers?
> "A Yes, I did." (T-131, lines 17-19).

In area of (f) resulting injury proximately cause by reliance:

Cross: "Q If I understand your testimony, you believed that that house until sometime in 1982 was half yours?
"A Yes, sir." (T-125, 2-4).
"Q Did you make any payments on this, the Arquette Road house?
"A I made one on that.
"Q How much was that payment?
"A It was $120."(sic)(T-88-, lines 8-12).

And appellant, believing that the house was "half" hers since she had went into debt with appellee by signing the "loan papers" and unaware that there was a quitclaim deed in the pile of papers she had signed, made over a thousand dollars of improvements to the house, including "wall-to-wall carpeting" in two rooms and a hallway (T-76, 11-19), cooking range installed in the kitchen (T-77, 9-19), and "four rose bushes" appellant bought and paid for and planted in the yard of the house she lived in and believed was "half" hers (T-25, 2-4).

With only these few examples direct from the transcript on the elements of fraud, how could the court of appeals, with any integrity, make the broad-brush statment that the "record in this case reveals that the appellant *failed to present any evidence as to any of the elements noted in Lipman*"? (Emphasis appellant's).

What a broad statement? Completely ungrounded.

A further example of a gross distortion of the facts by the court of appeals:

> "Appellant further admitted at trial that she had had the present ability and the *opportunity* to read all of the documents which she signed on the date in question, but that she had, of her own volition, *neglected* to do so." (Decision & Journal Entry, see Appendix 19, lines 16-19). (Emphasis appellant's).

Now let's look at the testimony of appellant:

> "Q Now did you have an *opportunity* to read the papers underneath?
> "A No, I did not." (T-70, lines 9-14). (Emphasis appellant's).

Notice the word, "*opportunity*"--- the very same word the appellant says "no" to, the Court of Appeals for the Sixth District said yes to.

It is true that on cross, appellant gave this testimony, but note the difference in wording---from "*opportunity to read*" to "*stop you from reading*":

> "Q Did anyone stop you from reading any papers?
> "A No." (T-111, lines 10-13).

Not necesarily conflicting evidence, for it is quite possible for one not to have the "opportunity to read" and still no one "stop(ped) you from reading".

Clearly the Court of Appeals for the Sixth District improperly selected those portions of the evidence that it chose *to consider* and *to believe*. Both are forbidden by *Ruta*, supra.

And it is quite obvious the court of appeals did not apply *Cothey v. Jones-Lemley Trucking Co.* (1964), 176 Ohio St. 342, in which the Supreme Court of Ohio stated that it is not necessary that every element of plaintiff's case be supported by direct proof in order to avoid a directed verdict, but it is sufficient if there is evidence upon which a reasonable inference may be predicated to support each such element.

Proposition of Law No. 7: *The determination concerning what constitutes a confidential relationship is a question of fact dependent upon the circumstances in each case, and where one with an eighth-grade education is induced to sign a quitclaim deed without reading it and without knowing it*

was a quitclaim deed and believing it was a loan paper under a pile of loan papers in reliance on the other party's statement that the papers to be signed were loan papers, and where the two parties had a long period of marriage followed by a divorce that was followed quickly by a discussion about getting back together again, which was quickly followed by their joint signing of a mortgage deed and note for a house in which both cohabited thereafter for a period of over four months during which the relying party paid for and had installed wall-to-wall carpeting in two rooms and a hallway and paid for hundreds of dollars of other improvements to the house, the relying party has the right to have a jury determine the issues as to whether or not there was a confidential relationship, whether or not there was fraud, and the amount of money damages, if any. (Stone v. Davis (1981), 66 Ohio St. 2d 74 followed; *Indermill v. Untied Savings* (1982), 5 Ohio App.3d 243 approved.)

Authorities in Support As They Appear:

1. *Stone v. Davis* (1981), 66 Ohio St.2d 74,419 N.E. 2d 1094.
2. *Indermill v. United Savings* (1982), 5 Ohio App. 3d 243, 451 N.E. 2d 538.
3. *Stevens v. Reilly,* 56 Okla 455, 156 P 157.
4. *Sabelli v. Bellanca Aircraft Corp.,* 134 Misc. 389, 235 N.Y.S. 321

The Court of Appeals for the Sixth District did not examine the evidence to see if a confidential relationship existed between appellant Lavaun Chetister and appellee, James Chetister. Instead, it improperly selected portions of the evidence to consider and improperly drew conclusions from such evidence when it stated that appellant"had, of her own volition, neglected" to read the quitclaim deed,(Decision & Journal Entry, Appendix 19, lines 16-19), after stating incorrectly that appellant had "the opportunity to read" it (lines 16-17).

The court of appeals misplaced reliance on two Ohio cases[3] in that both were readily distinguishable as having no facts of a confidential relationship.

The instant case does, as discussed supra. The Supreme Court in *Stone v. Davis* (1981), 66 Ohio St.2d 74, quoted from its opinion in *Umbaugh Pole Bldg. Co. v. Scott* (1979), 58 Ohio St.2d 282:

> "A fiduciary relationship need not be created by contract; it may arise out of an informal relationship where both parties understand that a special trust or confidence has been reposed." (*Stone*, supra p. 78).

And the Court of Appeals for Summit County stated at p. 245, lines 6-9:

> "The determination concerning what constitutes a confidential (fiduciary) relationship is a question of fact dependent upon the circumstances in each case." *Indermill v. United Savings* (1982), 5 Ohio App. 3d 243.

This Ohio law was available to the court of appeals, and many more, some from sister states: in *Stevens v. Reilly,* 56 Okla 455, 156 P 157:

> "When it appears that one has been guilty of intentional and deliberate false statements, by which to his knowledge another has been misled and influenced in his action, he cannot escape the legal consequences of his fraudulent conduct by saying that the fraud might have been discovered had the party whom he deceived exercised ordinary care and diligence."

---

[3]*Dice v. Akron, Canton & Youngstown Rd. Co.* (1951), 155 Ohio St. 185; *Leedy v. Ellsworth Construction Co.* (1966), 9 Ohio App.2d 1.

And in *Sabelli v. Bellanca Aircraft Corp,* 134 Misc. 389, 235 N.Y.S. 321:

> "Where one is induced to sign an instrument *without reading it* in reliance on the other party's statement as to the contents thereof, he may avoid the contract on the grounds of fraud." (Emphasis appellant's).

III. CONCLUSION:

When the Sixth Court of Appeals sustained the Lucas County trial court on a directed verdict for a reason other than those given by the trial court and argued separately by appellant on appeal in her brief, appellant might just as well not written her brief, for in this situation, CivR. 50(E) did not enable, as the Supreme Court intended, appellant to challenge the trial court's ruling on appeal. This causes appellant additional appeal expenses!

This should be corrected, otherwise appellants similarly situated will never be able to resurrect and revitalize their cases under Rule 50(E) on first appeal.

Supreme Court of Ohio should take jurisdiction, construe 50(E) and AppR.12(A).

/s/ Walton H. Donnell

Walton H. Donnell-Counsel for Appellant

APPENDIX D

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO,	)	1984 TERM
	)	
City of Columbus.	)	To wit: April 11, 1984
	)	
Lavaun Chetister,	)	No. 84-336
Appellant,	)	MOTION FOR AN ORDER
	)	DIRECTING THE COURT
vs.	)	OF APPEALS
	)	
James G. Chetister,	)	for LUCAS County
Appellee.	)	TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by W.H.Donnell.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and seal of the Court
This _____ day of _____ 19 ____
_____ Clerk
_____ Deputy

APPENDIX E

IN THE SUPREME COURT OF OHIO

Lavaun Chetister, Plaintiff-Appellant,	:	Supreme Court No. - 84-336
-vs-	:	C.A. No.-L-83-318 (Sixth District)
James G. Chetister, Plaintiff-Appellee.	:	C.P. No.-82-1161 (Lucas County)

MOTION

for

REHEARING

(filed April 20, 1984 in the Ohio Supreme Court)

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MEMORANDUM IN SUPPORT OF MOTION

Procedurally, the very same factual setting (of the instant case) was present in Licking County (Eleventh District) ten years ago when the Supreme Court took jurisdiction and stated a "fairness" policy to be used in all App. R.12(A) cases when the Court of Appeals contemplates a decision upon an issue not briefed by appellant. The highest of Ohio courts said:

> "In fairness to the parties, a Court of Appeals which contemplates a decision upon an issue not briefed should, as the Court of Appeals in this case did, give the parties notice of its intention and an opportunity to brief the issue." (P. 301, fn.3, *C. Miller Chevrolet v. Willoughby Hills* (1974), 38 Ohio St. 2d 298, 313 N.E. 2d 400).

This *fairness* policy and *notice* is absent in the Sixth Appellate District.

Thirteen years ago the Supreme Court accepted jurisdiction in *Rothfuss v. Hamilton Masonic Temple Co.* (1971), 27 Ohio St. 2d 131, 271 N.E. 2d 801, when the question of great public interest was the same as in the instant case--non-compliance with App. R. 12(A). The Court stated:

"Failure by the Court of Appeals to state its reasons for not passing upon all the assignments of error presented to it precludes this court from determining whether there was any merit to the claims of prejudicial error presented to the Court of Appeals by the assignments of error as a predicate to the appeal presented here."

Two years later, the Supreme Court took jurisdiction in another App.R. 12(A) case from Cuyahoga County (Eighth District) and quoted this quoted passage from *Rothfuss,* in *Lumberman's Alliance v. American Escelsior,* 33 Ohio St. 2d 37, 294 N.E. 224, apparently making compliance with App. R. 12(A) a significant part of the procedural law in Ohio.

One month before *Lumberman,* the Supreme Court accepted jurisdiction of an App. R. 12(A) case in Licking County (Fifth District) in *Smith v. Jagger* (1973), 33 Ohio St. 2d 1, 292 N.E. 2d 641, stating in the syllabus:

"All errors assigned and briefed to be passed upon by Court of Appeals in writing-App.R. 12(A) -Judgment reversed and remanded."

In 1982, the Supreme Court accepted jurisdiction once again in Licking County (Fifth District) App. R. 12(A) case, and *per curiam* stated:

State v. Jennings (1982), 69 Ohio St. 2d 389, 433 N.E.2d 157:

"We find that the Court of Appeals failed to comply with App. R. 12(A) when it did not rule upon all of the assignments of error before it." (P. 390, lines 11-13.)

In the instant case, appellant's first assignment of error was:

"1. The court erred in granting the motion of defendant-appellee for a Directed Verdict pursuant to CivR 50(A)(4)."

Under this assignment of error, appellant briefed the three (3) reasons given by the trial court ior the basis of its decision for a directed verdict, these reasons being required by CivR 50(E).

Not one of them did the Court of Appeals pass upon. Instead, it based its entire three-page opinion and journal entry on an issue without first giving appellant notice of its intention and an opportunity to brief the issue as required by the "fairness" policy set down by the Surpeme Court in *C. Chevrolet* ten years before in 1974.

Procedural law substantially affects the rights of parties just as does the substantive law. The Court of Appeals did not comply with App. R. 12(A), nor did it comply with the "fairness" and "notice" policy set out by the Supreme Court in *C. Chevrolet,* supra. The Court of Appeals denied appellant equal treatment under the law in Ohio.

Further, by refusing to take jurisdiction of the instant case on April 11, 1984, after having taken jurisdiction in several other appellate districts in the state on the same question of great public interest--the non-compliance with App. R. 12(A)---the Supreme Court shows a deliberate attempt to discriminate, denying appellant the right to equal treatment under the law as guaranteed by the Fourteenth Amendment.

There is no policeman running around the state of Ohio protecting appellants in each appellate district from unequal treatment under the law. Appellant can only look to the Supreme Court of Ohio, and has a right to, as procedural law in the Sixth District should be as equally applied as in the Fifth or Eighth or Eleventh District.

/s/ Walton H. Donnell

Walton H. Donnell, Counsel for Appellant

APPENDIX F

THE SUPREME COURT OF OHIO

COLUMBUS

FRANK D. CELEBREZZE
Chief Justice

THE STATE OF OHIO,
City of Columbus.

1984 TERM

Lavaun Chetister,
Appellant,

To Wit: May 9, 1984

vs.

Case No. 84-336
REHEARING

James G. Chetister,
Appellee.

It is ordered by the court that rehearing in this case is denied.

I, JAMES WM. KELLY, Clerk of the Supreme Court of the State of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of
the Court this 9th day of May, 1984.

_____ Clerk.

By _____ Deputy.

APPENDIX G

TEXT OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Effective 1791)

AMENDMENT XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. (Effective 1798)

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article (Effective 1868)

THE CODE OF THE LAWS
OF THE
UNITED STATES OF AMERICA
TITLE 42
THE PUBLIC HEALTH AND WELFARE

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
R.S. §1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

§ 1988.Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and

changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330.

OHIO CONSTITUTION, Art. IV, §2

(B)(2)The supreme court shall have appellate jurisdiction as follows:

(a)In appeals from the courts of appeals as a matter of right in the following:
(i)Cases originating in the courts of appeals;
(ii)Cases in which the death penalty has been affirmed;
(iii) Cases involving questions arising under the constitution of the United States or of this state.

OHIO REVISED CODE §2505.29

No appeal filed without leave of supreme court; exceptions.

No appeal shall be filed in the supreme court unless such court or a judge thereof grants leave to file such an appeal. Such leave need not be obtained to file an appeal as to the judgment or final order of the court of appeals, or a judge thereof, in cases involving questions under the constitution of the United States, or of this state, in cases which originated in the court of appeals, and as to proceedings of administrative officers as may be provided by law.
History: GC §12223-29; 116 v 104(111). §1. Eff 10-1-53.

RULES OF PRACTICE OF THE SUPREME COURT OF OHIO

RULE II

DETERMINATION OF JURISDICTION ON APPEALS FROM COURTS OF APPEALS

SECTION 2. Notice of Appeal Filed in the Supreme Court Considered as Motion to Certify or for Leave to Appeal.

Where the order, judgment or decree of the Court of Appeals that is appealed from was rendered in an action not originating in the Court of Appeals, the copy of the notice of appeal filed in the Supreme Court will be considered as a motion for leave to appeal in a felony case or as a motion to certify in any other case. No separate motion to certify or for leave to appeal need be filed.

OHIO RULES OF APPELLATE PROCEDURE

RULE 12. Determination and judgment on appeal

(A) Determination. In every appeal from a trial court of record to a court of appeals, not dismissed, the court of appeals shall review and affirm, modify, or reverse the judgment or final order of the trial court from which the appeal is taken. The appeal shall be determined on its merits on the assignments of error set forth in the briefs required by Rule 16, on the record on appeal as provided by Rule 9, and, unless waived, on the oral arguments of the parties, or their counsel, as provided by Rule 21. Errors not specifically pointed out in the record and separately argued by brief may be disregarded. All errors assigned and briefed shall be passed upon by the court in writing, stating the reasons for the court's decision as to each such error.